IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 1ST SEPTEMBER 2006 / 10TH BHADRA 1928

OP.No. 40 of 2000(D)

PETITIONERS:
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1. MATHEW GEORGE, PAZHAYATHARA, VADAKKEKKARA POST, CHETHIPPUZHA

2. CHINNAMMA GEORGE, PAZHAYATHARA, VADAKKEKKARA POST, CHETHIPPUZHA

3. MARIKUTTY JOSEPH, W/O. MATHEW JOSEPH, PAZHAYATHARA, VAZHAPPALLY, CHETHIPPUZHA.

BY ADV. SMT.T.D.RAJALAKSHMI
SRI.E.R.VENKATESWARAN

RESPONDENTS:
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1. DEPUTY TAHSILDAR, R.R., CHANGANACHERRY.

2. CANARA BANK, VYTHIRI, WAYANAD.

R1 B Y ADV. SRI. SREE LATHA
R2 BY SC SRI. M.C. SEN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 01/09/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP 60 OF 2000 IN OP 40 OF 2000

DISMISSED

1.9.2006 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 PHOTOCOPY OF THE SALE DEED NO. 468/85 EXECUTED ON BEHALF OF THE FIRST PETITIONER DATED 18.3.1985

EXT.P2 PHOTOCOPY OF SALE DEED NO. 476/85 EXECUTED ON BEHALF OF THE 2ND PETITIONER DATED 18.3.1985

EXT.P3 PHOTOCOPY OF THE SALE DEED NO. 477/85 EXECUTED ON BEHALF OF THE 3RD PETITIONER DATED 18.3.1985

EXT.P4 PHOTOCOPY OF THE DEMAND NOTICE DATED 15.7.1999 ISSUED BY THE FIRST RESPONDENT TO THE FIRST PETITIONER.

EXT.P5 DO.DO. TO THE 2ND PETITIONER.

EXT.P6 DO.DO. TO THE THIRD PETITIONER.

RESPONDENTS' EXHIBITS:

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

O.P.NO. 40 OF 2000

Dated this the 1st day of September, 2006

JUDGMENT

Even though notice was sent six years back, second respondent has not filed any counter affidavit. I do not think O.P. should be kept pending any longer. The main grievance of the petitioner is that interest charged is excess. I do not think there is any scope for interference with contract rate of interest agreed between the parties. However, there will be direction to the second respondent to waive complete penal interest if the petitioner clears the balance arrears with agreed rate of interest on or before 15.1.2007. Recovery proceedings will be kept in abeyance for payment as above and as and when payment is made petitioner will produce receipt before the first respondent, and when payment is received he will close the recovery proceedings and return the same to the second respondent. However, if petitioner commits default in payment as above, the waiver of penal interest granted will automatically stand vacated and respondents will be free to proceed for recovery of the entire amount due.

O.P. is disposed of as above.

(C.N.RAMACHANDRAN NAIR)
Judge